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Minter Field Airport District

FREE REC .00

When Recorded, Mail To:

#119240 C001 R01 T09:34

Department of Toxic Substances Control
Fresno District Office
1515 Tollhouse Road
Clovis, CA 93612
Attention: Kevin Shaddy

OR
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NA
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COVENANT
TO RESTRICT USE OF PROPERTY

This Covenant and Agreement ("Covenant") is made on the 25th day of September, 1991, by Minter Field Airport District ("Covenantor"), who is the owner of record of certain property situated in, County of Kern, State of California, described in Exhibit "A" attached hereto and incorporated herein by this reference ("the Property") and by the California Department of Toxic Substances Control ("DTSC") with reference to the following facts:

- A. The portion of the property identified in Exhibit "B" contains hazardous substances.
- B. The portion of the property identified in Exhibit "B" is contaminated with the hazardous substances arsenic, paraquat, furadan, and dinoseb at concentrations as high as 250, 1600, 160, and 2400 mg/kg, respectively. Human contact with these substances can result in a variety of health impacts. The property is used for a variety of industrial activities in addition to its primary function as an airport. The surrounding property consists primarily of airport property and agricultural land, however, some residential and industrial uses also occur.
- C. Covenantor desires and intends that in order to protect the present or future public health and safety, the property shall be used in such a manner as to avoid potential harm to persons or property which may result from hazardous substances which have been deposited on the portion of the property identified in Exhibit "B".

ARTICLE 1

GENERAL PROVISIONS

- 1.01 Provisions to Run With the Land. This Covenant sets forth protective provisions, covenants, restrictions, and conditions, (collectively referred to as "Restrictions"), upon and subject to which the Property and every portion thereof shall be improved, held, used, occupied, leased, sold, hypothecated, encumbered, and/or conveyed. Each and all of the Restrictions shall run with the land, and pass with each and every portion of the Property, and shall apply to and bind the respective successors in interest thereof. Each and all of the Restrictions are imposed upon the specific portion of the Property shown in Exhibit "B". Each and all of the Restrictions are imposed pursuant to Section 25222.1 of the Health and Safety Code and run with the land. Each and all of the Restrictions are enforceable by the DTSC.
- 1.02 Concurrence of Owners Presumed. All purchasers, lessees, or possessors of any portion of the Property shall be deemed by their purchase, leasing, or possession of such Property, to be in accord with the foregoing and to agree for and among themselves, their heirs, successors, and assignees, and the agents, employees, and lessees of such owners, heirs, successors, and assignees, that the Restrictions as herein established must be adhered to for the benefit of future Owners and Occupants and that their interest in the Property shall be subject to the Restrictions contained herein.
- 1.03 Incorporation Into Deeds and Leases. Covenantor desires and covenants that the Restrictions set out herein shall be incorporated by reference in each and all deeds and leases of any portion of the specified portion of said Property.
- 1.04 Covenantor shall semi-annually inspect and make necessary repairs to the asphalt concrete cap covering that portion of the property identified in Exhibit "B". The purpose being the maintenance of the cap's integrity as a barrier preventing water infiltration into contaminated soils, the movement of contaminated soil in surface runoff, and wind borne transport of contaminated soils.
- 1.05 Twice a year at approximate six (6) month intervals, Covenantor shall collect and have analyzed two surface runoff samples. One sample shall be obtained from the upper end of the new cap and the other sample from the downstream end of the surface flow while still on the asphalt concrete cap. At the time the samples are obtained, Covenantor shall check the two (2) monitoring wells within the paved area to determine if any water is present. If water is present a sample shall also be obtained from the wells and analyzed along with the surface samples. The samples shall be taken after sufficient rainfall has occurred which will provide an indication if chemicals of concern are being transported from adjacent surface soils. The samples shall be analyzed for

arsenic only and copies of the test reports shall be sent to the County Public Works Department and DTSC.

- 1.06 After five years, the analysis of the water samples may be discontinued with the written approval of the DTSC, provided the analyses have indicated that the asphalt cap is providing the intended barrier, preventing the substances of concern from migrating.

ARTICLE II

DEFINITIONS

- 2.01 Department. "Department" shall mean the California State Department of Toxic Substances Control (DTSC) and shall include its successor agencies, if any.
- 2.02 Improvements. "Improvements" shall mean all buildings, roads, driveways, regradings, and paved parking areas, constructed or placed upon any portion of the Property.
- 2.03 Occupants. "Occupants" shall mean those persons entitled by ownership, leasehold, or other legal relationship to the exclusive right to occupy any portion of the Property.
- 2.04 Owner. "Owner" shall mean the Covenantor or its successors in interest, including heirs, and assigns, who hold title to all or any portion of the Property.

ARTICLE III

DEVELOPMENT, USE, AND CONVEYANCE OF THE PROPERTY

- 3.01 Restriction on Use. Covenantor promises to restrict the use of the portion of the Property as described in Exhibit "B" as follows:
- (1) Covenantor shall not allow any new use of the property without first applying for and receiving a written variance from the DTSC for that new use pursuant to Article IV of this covenant and agreement.
 - (2) Covenantor shall not permit the construction of any improvements on top of the asphalt concrete cap covering that portion of the property identified in Exhibit "B" and shall not allow any work to be performed which could jeopardize the integrity of the cap without first applying for and receiving a written variance from the DTSC pursuant to Article IV of this covenant and agreement.

- 3.02 Conveyance of Property. The Owner or Owners shall provide a thirty (30) days advance notice to the Department of any sale, lease, or other conveyance of the Property or an interest in the Property to a third person. The Department shall not, by reason of the Covenant, have authority to approve, disapprove, or otherwise affect any sale, lease, or other conveyance of the Property except as otherwise provided by law, by administrative order, or by reason of this Covenant.
- 3.03 Enforcement. Failure of the Owner to comply with any of the requirements, as set forth in paragraph 3.01 shall be grounds for the Department, by reason of the Covenant, to require that the owner modify or remove any Improvements constructed in violation of the paragraph. Violation of the Covenant shall be grounds for the Department to file civil and criminal actions against the Owner as provided by law.
- 3.04 Notice in Agreements. All Owners and Occupants shall execute a written instrument which shall accompany all purchase, lease, sublease, or rental agreements relating to the restricted Property. The instrument shall contain the following statement:

"The land described herein contains hazardous substances. Such condition renders the land and the owner, lessee, or other possessor of the land subject to requirements, restrictions, provisions, and liabilities contained in Chapter 6.5 and Chapter 6.8 of Division 20 of the Health and Safety Code. This statement is not a declaration that a hazard exists."

ARTICLE IV

VARIANCE AND TERMINATION

- 4.01 Modification or Removal. Any Owner or, with the Owner's consent, any Occupant of the Property or any portion thereof may apply to the Department for a written variance from the provisions of this Covenant. Such application shall be made in accordance with Section 25233, H&SC.
- 4.02 Termination. Any Owner or, with the Owner's consent, an Occupant of the Property or a portion thereof may apply to the Department for a termination of the Restrictions as they apply to all or any portion of the Property. Such application shall be made in accordance with Section 25234, H&SC.
- 4.03 Term. Unless terminated in accordance with paragraph 4.02 above, by law or otherwise, this Covenant shall continue in effect in perpetuity.

ARTICLE V

MISCELLANEOUS

- 5.01 No Dedication Intended. Nothing set forth herein shall be construed to be a gift or dedication, or offer of a gift or dedication, of the Property or any portion thereof to the general public or for any purposes whatsoever.
- 5.02 Notices. Whenever any person gives or serves any notice, demand, or other communication with respect to this Covenant, each such notice, demand, or other communication shall be in writing and shall be deemed effective 1) when delivered, if personally delivered to the person being served or to an officer of a corporate party being served or official of a government agency being served, or 2) three (3) business days after deposit in the mail if mailed by United States mail, postage paid certified, return receipt requested:
- To: "Covenantor"
Minter Field Airport District
Rt. 11, Box 620
Bakersfield, CA 93312
- Copy to: Department of Toxic Substances Control
Fresno District Office
1515 Tollhouse Road
Clovis, CA 93612
Attention: Kevin Shaddy
- 5.03 Partial Invalidity. If any portion of the Restrictions set forth herein or terms is determined to be invalid for any reason, the remaining portion shall remain in full force and effect as if such portion had not been included herein.
- 5.04 Article Headings. Headings at the beginning of each numbered article of this Covenant are solely for the convenience of the parties and are not a part of the Covenant.
- 5.05 Recordation. This instrument shall be executed by the Covenantor and by the Director, California Department of Toxic Substances Control. This instrument shall be recorded by the Covenantor in the County of Kern within ten (10) days of the date of execution.
- 5.06 References. All references to Code sections include successor provisions.

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IN WITNESS WHEREOF, the parties execute this Covenant as of the date set forth above.

OWNER

Minter Field Airport District

By: 

Title: President, Board of Directors

Date: September 25, 1991

CALIFORNIA DEPARTMENT OF
TOXIC SUBSTANCES CONTROL

By: 

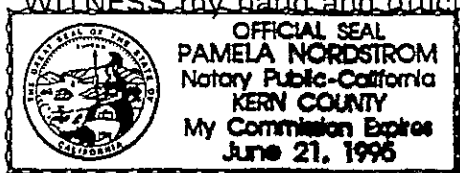
Title: Regional Administrator

Date: October 30, 1991

STATE OF CALIFORNIA)
)
 COUNTY OF KERN)

On September 25, 1991 before me, the undersigned, a Notary Public in and for said state, personally appeared Dana S. Mulder, personally known to me or proved to me on the basis of satisfactory evidence to be the person who executed the within instrument as Pres., Board of Directors of the airport district that executed the within instrument, and acknowledged to me that such airport district executed the same pursuant to its bylaws or a resolution of its board of directors.

WITNESS my hand and official seal.

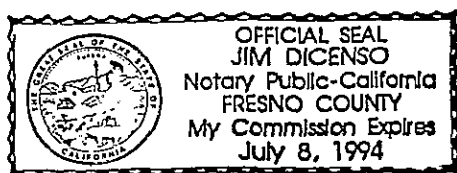


Pamela Nordstrom
 Notary Public in and for said County and State

STATE OF CALIFORNIA)
)
 COUNTY OF FRESNO)

On October 30, 1991 before me, the undersigned, a Notary Public in and for said state, personally appeared VAL FRANK SIEBAL, personally known to me or proved to me on the basis of satisfactory evidence to be the person who executed the within instrument as REGIONAL ADMINISTRATOR of the Department of Toxic Substances Control the agency that executed the within instrument, and acknowledged to me that which agency executed the same.

WITNESS my hand and official seal.



Jim Dicenso
 Notary Public in and for said County and State

CL:cf
 COVENANT.A10

DESCRIPTION

Minter Field Airport Property

All that certain piece or parcel of land situate, lying and being in the County of Kern, State of California, to wit:

Those portions of Sections Seven (7), Eight (8), Nine (9) and Sixteen (16) in Township Twenty-eight (28) South, Range Twenty-six (26) East, Mount Diablo Base and Meridian, in the County of Kern, State of California, described as an entirety as follows:

Beginning at a point in the South line of said Section 9, 60 feet Westerly from the Southeast corner thereof; thence North $01^{\circ} 40'$ East 676.8 feet; thence North $45^{\circ} 08'$ West 824.0 feet; thence North $89^{\circ} 56'$ West, 158.3 feet; thence North $01^{\circ} 40'$ East 750.6 feet; thence North $45^{\circ} 08'$ West, 204.02 feet; thence South $75^{\circ} 27'$ West, 1071.7 feet; thence North $65^{\circ} 07' 30''$ West, 502.1 feet; thence North $45^{\circ} 32' 30''$ West, 2687.7 feet; thence North $65^{\circ} 33'$ West 675.13 feet; thence North $43^{\circ} 33'$ West, 327.5 feet; thence North $28^{\circ} 30'$ West 36.7 feet; thence North $31^{\circ} 20'$ West, 895.5 feet to a point on the North line of said Section 8, said point being 486.0 feet West from the corner common to said Sections 4, 5, 8 and 9, thence South $89^{\circ} 57' 25''$ West, 4801.52 feet along the North line of Section 8 to the corner common to said Sections 5, 6, 7 and 8; thence Southerly along the Easterly line of said Section 7 to the Southerly line of North half of the Northeast Quarter of said Section 7; thence Westerly along the Southerly line of the North half of the Northeast Quarter of said Section 7, to the Westerly line thereof;

thence South $01^{\circ} 32' 50''$ West along the North-South centerline of said Section 7 to the South quarter corner thereof; thence South $89^{\circ} 52' 10''$ East 2638.9 feet along the Southerly line of Section 7 to Southeast corner thereof; thence Easterly along the South line of Section 8 and the common line of Sections 9 and 16 to the Northwest corner of Lot 3 of Section 16, Township 28 South, Range 26 East, Mount Diablo Base and Meridian, as said Lot 3 is shown on the Sales Map of the Lands of J. B. Haggin in said Section, filed August 20, 1890 in the Office of the County Recorder of said County; thence Southerly along the Westerly line of said Lot 3 to its Southwest corner; thence Easterly along the South line of said Lot 3 to its Southeast corner; thence Northerly along the Easterly line of said Lot 3 to the Northeast corner thereof, and a point on the South line of said Section 9; thence Easterly along the South line of said Section 9 to the point of beginning, containing 1,207.299 acres, more or less.

RESERVING, HOWEVER, unto the United States of America an easement for right-of-way for the Friant-Kern Canal over and across the following described land:

A parcel of land in Section Seven (7) in Township Twenty-eight (28) South of Range Twenty-six (26) East of the Mount Diablo Meridian, containing an area of 38.7 acres, more or less, and being all that part of the South half of the Northeast Quarter ($S \frac{1}{2}$ of $NE \frac{1}{4}$) and of the Southeast Quarter ($SE \frac{1}{4}$) of said Section Seven (7) lying within the boundaries of a strip of land having a width of 450 feet, where measurable at right angles, and lying with 225 feet on each side of the centerline described as follows:

Beginning at a point that is in the West boundary of the Northeast Quarter (NE 1/4) of said Section 7 and is distant therealong South $1^{\circ} 44'$ West 2303.3 feet from a point that is in the North boundary of said Section 7, and is distant along said North boundary North $89^{\circ} 40'$ West 2639.4 feet from the Northeast corner of said Section 7, and running thence from said point of beginning South $25^{\circ} 59'$ East 2105.19 feet; thence South $56^{\circ} 21'$ East 1286.27 feet; thence South $14^{\circ} 43'$ East 394.85 feet to a point that is in the South boundary of said Section 7 and is distant therealong North $89^{\circ} 43'$ West 456.0 feet from the Southeast corner of said Section 7; the side line boundaries of said strip of land to be lengthened or shortened, as the case may be, so as to terminate in the West boundary and in the South boundary of the East Half (E 1/2) of said Section 7.

DESCRIPTION

Area to be Capped at Minter Field

All that portion of Section 9, Township 28 South, Range 26 East, MDM, being a parcel of land described as:

Beginning at the Southwest corner of said Section 9, Easterly along the South section line a distance of 857.62' \pm ; and,

Northerly, at right angle to said section line, a distance of 80' \pm to a point on the North right of way line of Lerdo Highway, also being the true Point of Beginning;

THENCE (1) Northerly, a distance of 149' \pm , to a point on the concrete apron, said point also being an angle point on said concrete apron;

THENCE (2) Easterly, along Southerly edge of concrete apron, a distance of 451' \pm to a point also being the South Easterly corner of concrete apron;

THENCE (3) Northerly, along Easterly edge of concrete apron, a distance of 200';

THENCE (4) Easterly, at right angle to previous line, a distance of 55';

THENCE (5) Southerly, parallel to concrete apron, a distance of 349.5' \pm to a point on the North right of way line of Lerdo Highway

THENCE (6) Westerly, along said right of way line, a distance of 506' \pm to the Point of Beginning.

EXHIBIT "B"